

SUBCHAPTER G : WORDING OF THE MECHANISMS FOR LIABILITY

§37.601. Trust Agreement for Liability.

(a) A trust agreement for a liability trust fund, as specified in §37.501 of this title (relating to Trust Fund for Liability), must be worded as specified in Figure 1: Trust Agreement, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted and wherever closure information appears within braces that information shall be deleted. Figure 1: 30 TAC §37.601(a)

Figure 1: 30 TAC §37.601(a)

TRUST AGREEMENT

TRUST AGREEMENT, the "Agreement," entered into as of (date) by and between (name of the owner or operator), a (name of State) (insert "corporation," "partnership," "association," or "proprietorship"), the "Grantor," and (name of corporate trustee), (insert "incorporated in the State of _____" or "a national bank"), the "Trustee."

Whereas, the Texas Natural Resource Conservation Commission, "TNRCC," an agency of the State of Texas, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a facility(ies) must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facility(ies) identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) Facility or activity means any "facility" or any other facility or activity that is subject to regulation under 30 TAC Chapter 37.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A (on Schedule A, for each facility list the TNRCC registration or permit number, name, address, and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by sudden accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of up to (in words) U.S. dollars \$ _____ per occurrence and up to (in words) U.S. dollars \$ _____ annual aggregate for sudden accidental occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which (insert Grantor) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert Grantor) would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of (insert Grantor) under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of (insert Grantor) arising from, and in the course of, employment by (insert Grantor); or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and the course of employment by (insert Grantor).

This exclusion applies:

(A) Whether (insert Grantor) may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by (insert Grantor);

(2) Premises that are sold, given away or abandoned by (insert Grantor) if the property damage arises out of any part of those premises;

(3) Property loaned to (insert Grantor);

(4) Personal property in the care, custody or control of (insert Grantor);

(5) That particular part of real property on which (insert Grantor) or any contractors or subcontractors working directly or indirectly on behalf of (insert Grantor) are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered (insert "primary" or "excess") coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by TNRCC.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as parties (insert Grantor) and (insert name and address of third party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a sudden accidental occurrence arising from operating (Grantor's) facility(ies) should be paid in the amount of \$().

(Signatures)

Grantor

(Signatures)

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden accidental occurrences arising from the operation of the Grantor's facility(ies).

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like use, in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered or permitted under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the TNRCC executive director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the TNRCC executive director shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement of any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the TNRCC executive director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the TNRCC executive director to the Trustee shall be in writing, signed by his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or TNRCC hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or TNRCC, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund

following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the TNRCC executive director.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the TNRCC executive director, or by the Trustee and the TNRCC executive director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the TNRCC executive director, or by the Trustee and the TNRCC executive director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the TNRCC executive director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Texas.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 30 Texas Administrative Code §37.601(a) as such regulations were constituted on the date first above written.

(Signature of Grantor)

By (Title)

Attest:

(Title)

(Seal)

(Signature of Trustee)

By

Attest:

(Title)

(Seal)

(b) Figure 2: Certification of Acknowledgment is the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in this section. Figure 2: 30 TAC §37.601(b)

Figure 2: 30 TAC §37.601(b)

CERTIFICATION OF ACKNOWLEDGMENT

State of _____

County of _____

On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order to the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.
(signature of Notary Public)

Adopted December 4, 1996

December 30, 1996

§37.611. Payment Bond for Liability.

A surety bond guaranteeing payment for liability, as specified in §37.511 of this title (relating to Surety Bond Guaranteeing Payment for Liability), must be worded as in the Payment Bond for Liability, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.611

Figure: 30 TAC §37.611

PAYMENT BOND FOR LIABILITY

Surety Bond No. (Insert Number)

Parties (Insert name and address of owner or operator), Principal, incorporated in (insert State of incorporation) of (Insert city and State of principal place of business) and (Insert name and address of surety company(ies), Surety Company(ies), of (Insert surety(ies) place of business).

TNRCC Permit or Registration Number, name, and address for each facility guaranteed by this bond:

	Sudden accidental Occurrences
Penal Sum Per Occurrence.	<u>(Insert amount)</u>
Annual Aggregate	<u>(Insert amount)</u>

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its(their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions: Rules and regulations of 30 Texas Administrative Code Chapter 37.

Conditions:

(a) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

(1) Bodily injury or property damage for which (insert principal) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert principal) would be obligated to pay in the absence of the contract or agreement.

(2) Any obligation of (insert principal) under a worker's compensation, disability benefits, or unemployment compensation law or similar law.

(3) Bodily injury to:

(A) An employee of (insert principal) arising from, and in the course of, employment by (insert principal); or

(B) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert principal). This exclusion applies:

(i) Whether (insert principal) may be liable as an employer or in any other capacity; and

(ii) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(4) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(5) Property damage for:

(A) Any property owned, rented, or occupied by (insert principal);

(B) Premises that are sold, given away or abandoned by (insert principal) if the property damage arises out of any part of those premises;

(C) Property loaned to (insert principal);

(D) Personal property in the care, custody or control of (insert principal);

(E) That particular part of real property on which (insert principal) or any contractors or subcontractors working directly or indirectly on behalf of (insert principal) are performing operations, if the property damage arises out of those operations.

(b) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(c) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(d) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(1) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Certification of Valid Claim

The undersigned, as parties (insert name of Principal) and (insert name and address of third party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a sudden accidental occurrence arising from operating (Principal's) facility(ies) should be paid in the amount of \$(_____).

(Signature)
Principal
(Notary) Date

(Signature(s))
Claimant(s)
(Notary) Date

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden accidental occurrences arising from the operations of the Principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered (insert "primary" or "excess") coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the TNRCC executive director forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the TNRCC executive director, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the TNRCC executive director, as evidenced by the return receipt.

(8) The Principal may terminate this bond by sending notice of cancellation by certified mail to the Surety(ies) and the TNRCC executive director, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Surety(ies) and the TNRCC executive director, as evidenced by the return receipt.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from (insert date) (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 30 Texas Administrative Code §37.611, as such regulations were constituted on the date this bond was executed.

Principal

(Signature(s))
(Name(s))
(Title(s))
(Corporate Seal)

Corporate Surety(ies)

(Name and address)
State of incorporation: _____
Liability Limit: \$ _____
(Signature(s))
(Name(s) and title(s))
(Corporate seal)
(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)
Bond premium: \$ _____

Adopted December 4, 1996

December 30, 1996

§37.621. Irrevocable Letter of Credit for Liability.

An irrevocable standby letter of credit for liability, as specified in §37.521 of this title (relating to Irrevocable Standby Letter of Credit for Liability), must be worded as in the Irrevocable Standby Letter of Credit for Liability, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.621

Figure: 30 TAC §37.621

IRREVOCABLE STANDBY LETTER OF CREDIT FOR LIABILITY

Name and Address of Issuing Institution

Executive Director
Texas Natural Resource Conservation Commission

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in the favor of any and all third-party liability claimants, at the request and for the account of (owner's or operator's name and address) for third-party liability awards or settlements up to (in words) U.S. dollars \$_____ per occurrence and the annual aggregate amount of (in words) U.S. dollars \$_____, for sudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. _____, and (insert the following:

(1) a signed certificate reading as follows:

CERTIFICATE OF VALID CLAIM

The undersigned, as parties (insert principal) and (insert name and address of third party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a sudden accidental occurrence arising from operations of (principal's) facility(ies) should be paid in the amount of \$_____. We hereby certify that the claim does not apply to any of the following:

- (a) Bodily injury or property damage for which (insert principal) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert principal) would be obligated to pay in the absence of the contract or agreement.
- (b) Any obligation of (insert principal) under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.
- (c) Bodily injury to:
 - (1) An employee of (insert principal) arising from, and in the course of, employment by (insert principal); or
 - (2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert principal).This exclusion applies:
 - (A) Whether (insert principal) may be liable as an employer or in any other capacity; and
 - (B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).
- (d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.
- (e) Property damage to:
 - (1) Any property owned, rented, or occupied by (insert principal);
 - (2) Premises that are sold, given away or abandoned by (insert principal) if the property damage arises out of any part of those premises;
 - (3) Property loaned to (insert principal);
 - (4) Personal property in the care, custody or control of (insert principal);
 - (5) That particular part of real property on which (insert principal) or any contractors or subcontractors working directly or indirectly on behalf of (insert principal) are performing operations, if the property damage arises out of these operations.

(Signatures) _____

Principal _____

(Signatures) _____

Claimant(s) _____

or

- (2) a valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by a sudden accidental occurrence arising from operation of the Principal's facility or group of facilities.

This letter of credit is effective as of (date) and shall expire on (date at least one year later), but such expiration date shall be automatically extended for a period of (at least one year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the TNRCC executive director, and (owner's or operator's name) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter or credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered (insert "primary coverage" or "excess coverage").

We certified that the wording of this letter of credit is identical to the wording specified in 30 Texas Administrative Code §37.621 as such regulations were constituted on the date shown immediately below.
(Signature(s) and title(s) of official(s) of issuing institution) (Date).

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code").

Adopted December 4, 1996

December 30, 1996

§37.631. Certificate of Insurance for Liability

A certificate of liability insurance, as specified in §37.531 of this title (relating to Insurance for Liability), must be worded as in the Certificate of Insurance for Liability, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.631

Figure: 30 TAC §37.631

CERTIFICATE OF INSURANCE FOR LIABILITY

1. (Name of Insurer), the "Insurer", of (address of Insurer) hereby certifies that is has issued liability insurance covering bodily injury and property damage to (name of insured), the "Insured", of (address of Insured) in connection with the insured's obligation to demonstrate financial responsibility under 30 TAC §37.401 of this title (relating to Liability Requirements for Sudden Accidental Occurrences). The coverage applies at (list facility identification or registration number, name, and address for each facility) for sudden

accidental occurrences; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences. The limits of liability are (insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability), exclusive of legal defense costs. The coverage is provided under policy number _____, issued on (date). The effective date of said policy is (date).

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

- (a) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.
- (b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 30 TAC §37.541 of this title (relating to Financial Test for Liability).
- (c) Whenever required by the TNRCC executive director, the Insurer agrees to furnish to the executive director a signed duplicate original of the policy and all endorsements.
- (d) Cancellation of the insurance, whether by the Insurer, the Insured, or a parent corporation providing insurance coverage for its subsidiary, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the TNRCC executive director.
- (e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of 30 days after a copy of such written notice is received by the TNRCC executive director.

I hereby certify that the wording of this instrument is identical to the wording specified in 30 TAC §37.631 as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(Signature of authorized representative of Insurer)
(Type name)
(Title), Authorized Representative of (Name of Insurer)
(Address of Representative)

Adopted December 4, 1996

December 30, 1996

§37.641. Endorsement for Liability.

A liability endorsement as specified in §37.531 of this title (relating to Insurance for Liability), must be worded as in the Endorsement for Liability, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.641

Figure: 30 TAC §37.641

ENDORSEMENT FOR LIABILITY

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to

demonstrate financial responsibility under 30 TAC §37.401 of this title (relating to Liability Requirements for Sudden Accidental Occurrences). The coverage applies at (list facility identification or registration number, name, and address for each facility) for sudden accidental occurrences; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences. The limits of liability are (insert the dollar amount of the “each occurrence” and “annual aggregate” limits of the Insurer’s liability), exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsection (a) through (e):

- (a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.
- (b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 30 TAC §37.541 of this title (relating to Financial Test for Liability).
- (c) Whenever requested by the TNRCC executive director, the Insurer agrees to furnish to the executive director a signed duplicate original of the policy and all endorsements.
- (d) Cancellation of this endorsement, whether by the Insurer, the Insured, or a parent corporation providing insurance coverage for its subsidiary, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the TNRCC executive director.
- (e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of 30 days after a copy of such written notice is received by the TNRCC executive director.

Attached to and forming part of policy No. _____ issued by (name of Insurer), herein called the Insurer, of (address of Insurer) to (name of Insured) of (address of Insured) this ____ day of _____, 19___. The effective date of said policy is ____ day of _____, 19__.

I hereby certify that the wording of this endorsement is identical to the wording specified in 30 TAC §37.641 as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(Signature of Authorized Representative of Insurer)
(Type Name)
(Title), Authorized Representative of (name of Insurer)
(Address of Representative)

Adopted December 4, 1996

December 30, 1996

§37.651. Financial Test for Liability.

A letter from the chief financial officer for liability, as specified in §37.541 of this title (relating to Financial Test for Liability) must be worded as in the Financial Test for Liability, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.651

Figure: 30 TAC §37.651

FINANCIAL TEST FOR LIABILITY

LETTER FROM CHIEF FINANCIAL OFFICER

(Address to TNRCC Executive Director)

I am the chief financial officer of (firms's name and address). This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage (if applicable, insert "and closure") as specified in 30 Texas Administrative Code (TAC) Chapter 37.

(Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its TNRCC registration or permit number, name, and address).

The firm identified above is the owner or operator of the following facilities for which liability coverage for sudden accidental occurrences is being demonstrated through the financial test specified in 30 TAC §37.541 of this title (relating to Financial Test for Liability):_____.

The firm identified above guarantees, through the guarantee specified in 30 TAC §37.551 of this title (relating Financial Test for Liability), liability coverage for sudden accidental occurrences at the following facilities owned or operated by the following:_____. The firm identified above is the direct or higher-tier parent corporation of the owner or operator.

(If you are using the financial test to demonstrate coverage of both liability and closure, fill in the following five paragraphs regarding facilities and associated closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its TNRCC registration or permit number, name, address, and current closure estimates.)

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or liability coverage is demonstrated through the financial test specified in 30 TAC §37.541 of this title (relating to Financial Test for Liability). The current closure cost estimate covered by the test are show for each facility:_____.
2. The firm identified above guarantees, through the guarantees specified in 30 TAC §37.551 of this title (relating to Corporate Guarantee for Liability), the closure and/or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for closure so guaranteed are shown for each facility:_____.
3. In States where TNRCC is not administering the financial requirements of 30 TAC §37.541 of this title (relating to Financial Test for Liability), this firm is demonstrating financial assurance for the closure of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in 30 TAC Chapter 37. The current closure cost estimates covered by such a test are shown for each facility:_____.
4. The firm identified above owns or operates the following facilities for which financial assurance for closure or, if a disposal facility, post-closure cost, is not demonstrated either to TNRCC, a federal agency or a State through the financial test or any other financial assurance mechanisms specified in

30 TAC Chapter 37 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:_____.

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR 144 and 30 TAC 331 and is assured through a financial test. The current closure cost estimates as required by 40 CFR 144.62 and 30 TAC 331.142 are shown for each facility:_____.

This firm (insert "is required" or "is not required") to file a For 10K with the Security and Exchange Commission (SEC) for the latest fiscal year. The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

(Fill in Part A if you are using the financial test to demonstrate assurance for only liability coverage. Or, fill in part B if you are using the financial test to demonstrate assurance for both closure and liability coverage.)

Part A. Liability Coverage for Accidental Occurrences

(Fill in Alternative I if the criteria of 30 TAC §37.541(b)(1) are used. Fill in Alternative II if the criteria of 30 TAC §37.541(b)(2) are used.)

ALTERNATIVE I

- | | | | |
|------|---|----------|--------|
| 1. | Amount of annual aggregate liability coverage to be demonstrated | \$ _____ | |
| *2. | Current assets | \$ _____ | |
| *3. | Current liabilities | \$ _____ | |
| 4. | Net working capital (line 2 minus line 3) | \$ _____ | |
| *5. | Tangible net worth | \$ _____ | |
| *6. | If less than 90% of assets are located in the U. S., give total U.S. assets | \$ _____ | |
| 7. | Is line 5 at least \$10 million? | | Yes/No |
| 8. | Is line 4 at least 6 times line 1? | | Yes/No |
| 9. | Is line 5 at least 6 times line 1? | | Yes/No |
| *10. | Are at least 90% of assets located in the U.S.? (If not, complete line 11) | | Yes/No |
| 11. | Is line 6 at least 6 times line 1? | | Yes/No |

ALTERNATIVE II

- | | | | |
|-----|---|----------|--------|
| 1. | Amount of annual aggregate liability coverage to be demonstrated | \$ _____ | |
| 2. | Current bond rating of most recent issuance and name of rating service | _____ | |
| 3. | Date of issuance of bond | _____ | |
| 4. | Date of maturity of bond | _____ | |
| *5. | Tangible net worth | \$ _____ | |
| *6. | Total assets in U.S. (Required only if less than 90% of assets are located in the U.S.) | \$ _____ | |
| 7. | Is line 5 at least \$10 million? | | Yes/No |

- | | | |
|-----|--|--------|
| 8. | Is line 5 at least 6 times line 1? | Yes/No |
| 9. | Are at least 90% of assets located in the U.S.? (If not, complete line 10) | Yes/No |
| 10. | Is line 6 at least 6 times line 1? | Yes/No |

Part B. Closure and Liability Coverage

(Fill in Alternative I if the criteria of 30 TAC §37.251(b)(1) and 30 TAC §37.541(b)(1) are used. Fill in Alternative II if the criteria of 30 TAC §37.251(b)(2) and 30 TAC §37.541(b)(2) are used.)

ALTERNATIVE I

- | | | | |
|------|--|----------|--------|
| 1. | Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) | \$ _____ | |
| 2. | Amount of annual aggregate liability coverage to be demonstrated | \$ _____ | |
| 3. | Sum of lines 1 and 2 | \$ _____ | |
| * 4. | Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) | \$ _____ | |
| * 5. | Tangible net worth | \$ _____ | |
| * 6. | Net worth | \$ _____ | |
| * 7. | Current assets | \$ _____ | |
| * 8. | Current liabilities | \$ _____ | |
| 9. | Net working capital (line 7 minus line 8) | \$ _____ | |
| 10. | The sum of net income plus depreciation, depletion, and amortization | \$ _____ | |
| *11. | Total assets in the United States (required only if less than 90% of assets located in the United States) | \$ _____ | |
| 12. | Is line 5 at least \$10 million? | | Yes/No |
| 13. | Is line 5 at least 6 times line 3? | | Yes/No |
| 14. | Is line 9 at least 6 times line 3? | | Yes/No |
| *15. | Are at least 90% of assets located in the U.S.? (If not, complete line 16) | | Yes/No |
| 16. | Is line 11 at least 6 times line 3? | | Yes/No |
| 17. | Is line 4 divided by line 6 less than 2.0? | | Yes/No |
| 18. | Is line 10 divided by line 4 greater than 0.1? | | Yes/No |
| 19. | Is line 7 divided by line 8 great than 1.5? | | Yes/No |

ALTERNATIVE II

- | | | |
|-----|--|----------|
| 1. | Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) | \$ _____ |
| 2. | Amount of annual aggregate liability coverage to be demonstrated | \$ _____ |
| 3. | Sum of lines 1 and 2 | \$ _____ |
| 4. | Current bond rating of most recent issuance and name of rating service | _____ |
| | | _____ |
| 5. | Date of issuance of bond | _____ |
| 6. | Date of maturity of bond | _____ |
| *7. | Tangible net worth (if any portion of the closure of post-closure cost estimate is included "total liabilities" on your financial statements you | |

- may add that portion to this line) \$ _____
- * 8. Total assets in the U.S. (Required only if less than 90% of assets are located in the U.S.) \$ _____
9. Is line 7 at least \$10 million? Yes/No
10. Is line 7 at least 6 times line 3? Yes/No
- *11. Are at least 90% of assets located in the U.S.? (If not, complete line 12) Yes/No
12. Is line 8 at least 6 times line 3? Yes/No

I hereby certify that the wording of this letter is identical to the wording specified in 30 TAC §37.651 As such regulations were constituted on the date shown immediately below.

(Signature)

(Name)

(Title)

(Date)

Adopted December 4, 1996

December 30, 1996

§37.661. Corporate Guarantee.

A corporate guarantee for liability as specified in §37.551 of this title (relating to Corporate Guarantee for Liability) must be worded as in the Corporate Guarantee for Liability, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.661

Figure: 30 TAC §37.661

CORPORATE GUARANTEE FOR LIABILITY

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of (if incorporated within the United States insert “the State of _____” and insert name of State; in incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business), herein referred to as guarantor. This guarantee is made on behalf of (owner or operator) of (business address), which is our subsidiary, to any and all third parties who have sustained or may sustain bodily injury or property damage caused by sudden accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

RECITALS

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 30 Texas Administrative Code (TAC) §37.551 of this title (relating to Corporate Guarantee for Liability).
2. (Owner or operator) owns or operates the following facility(ies) covered by this guarantee: (List for each facility: TNRCC permit or registration number, name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor’s registered agent in

- each State.) This corporate guarantee satisfies third-party liability requirements for sudden accidental occurrences in above-named owner or operator facilities for coverage in the amount of (insert dollar amount) for each occurrence and (insert dollar amount) annual aggregate.
3. For value received from (owner or operator), guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by sudden accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that (owner or operator) fails to satisfy a judgment or award based on determination of liability for bodily injury or property damage to third parties caused by sudden) accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.
 4. Such obligation does not apply to any of the following:
 - (a) Bodily injury or property damage for which (insert owner or operator) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert owner or operator) would be obligated to pay in the absence of the contract or agreement.
 - (b) Any obligation of (insert owner or operator) under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.
 - (c) Bodily injury to:
 - (1) An employee of (insert owner or operator) arising from, and in the course of, employment by (insert owner or operator); or
 - (2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert owner or operator). This exclusion applies:
 - (A) Whether (insert owner or operator) may be liable as an employer or in any other capacity; and
 - (B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).
 - (d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.
 - (e) Property damage to:
 - (1) Any property owned, rented, or occupied by (insert owner or operator) ;
 - (2) Premises that are sold, given away or abandoned by (insert owner or operator) if the property damage arises out of any part of those premises;
 - (3) Property loaned to (insert owner or operator) ;
 - (4) Personal property in the care, custody or control of (insert owner or operator) ;
 - (5) That particular part of real property on which (insert owner or operator) or any contractors or subcontractors working directly or indirectly on behalf of (insert owner or operator) are performing operations, if the property damage arises out of these operations.
 5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the TNRCC executive director and to (owner or operator) that he intends to provide alternate financial assurance for liability coverage as specified in Subchapter F of 30 TAC Chapter 37, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless (owner or operator) has done so.

6. The guarantor agrees to notify the TNRCC executive director by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.
7. Guarantor agrees that within 30 days after being notified by the TNRCC executive director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate financial assurance for liability coverage as specified in Subchapter F of 30 TAC Chapter 37 in the name of (owner or operator), unless (owner or operator) has done so.
8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by 30 TAC §37.401 of this title (relating to Liability Requirements for Sudden Accidental Occurrences), provided that such modification shall become effective only if the TNRCC executive director does not disapprove the modification within 30 days of receipt of notification of the modification.
9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) must comply with the applicable requirements of 30 TAC §37.401 of this title (relating to Liability Requirements for Sudden Accidental Occurrences) for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.
10. Guarantor may terminate this guarantee by sending notice by certified mail to the TNRCC executive director and to (owner or operator) provided that this guarantee may not be terminated unless and until (the owner or operator) obtains, and the TNRCC executive director approves, alternate financial assurance for liability coverage complying with Subchapter F of 30 TAC Chapter 37.
11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.
12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.
13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:
 - (a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as parties (insert Principal) and (insert name and address of third-party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a sudden accidental occurrence arising from operating (Principal's) facility should be paid in the amount of \$ ().

(Signature) _____
Principal _____
(Notary) Date _____
(Signature(s)) _____
Claimant(s) _____
(Notary) Date _____

- (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered (insert "primary" or "excess") coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in 30 TAC §37.661 as such regulations were constituted on the date shown immediately below.

Effective date: _____
(Name of guarantor) _____
(Authorized signature for guarantor) _____
(Name of person signing) _____
(Title of person signing] _____
Signature of witness of notary: _____

Adopted December 4, 1996

December 30, 1996